

III. PROCEDURES FOR MAJOR SUBDIVISIONS

Overview of Major Subdivision Review Process

(Subdivision Application Review Process for Major Subdivisions)

STEP 1:

- A. Initial contact with County Permit Coordinator to set up a pre-application conference.
- B. Applicant develops design.
- C. Pre-application conference: (Applicant obtains guidelines, forms, and regulations, discusses proposal and sketch plan with the County Planning and Environmental Health staff).
- D. Preparation of formal subdivision application based on regulations and pre-application conference.

STEP 2:

- A. The complete and sufficient subdivision application and the review fee must be submitted to the Planning Office by the application deadline. The planning staff reviews the subdivision application for completeness and sufficiency. In the event the subdivision application is not complete or sufficient, the applicant shall be notified in writing as to the missing elements required for the application.
- B. At least 15 calendar days prior to the public hearing, a notice of hearing is published, and certified letters are mailed to adjacent property owners, the applicant, and subdividers, as required by MCA.
- C. Staff analysis of application and comments, with recommendation to Planning Board.
- D. Planning Board public hearing conducted and subdivision reviewed.
- E. Planning Board recommendation for approval, conditional approval, or denial of subdivision application submitted in writing to the governing body and the applicant.

- F. Governing body meeting to approve, conditionally approve or deny the subdivision application.
- G. If new comments or evidence from the Applicant or other interested parties are presented at or after the Planning Board public hearing, but before the governing body's decision, a subsequent public hearing on the new evidence before the Planning Board may be required.
- H. The governing body shall prepare a written notice of their decision to approve, conditionally approve, or deny to the Applicant.

Applicant may request in writing an extension of the subdivision application and preliminary plat review process time limit at any stage.

(Final Plat Review Process for Major Subdivisions)

STEP 3:

- A. Applicant submits a final plat application and has met all the Conditions of Approval as delineated in his/her approval letter.
- B. Final plat submittal to the planning staff must occur in accordance with the stipulated time frame.
- C. Final plat reviewed by governing body and planning staff. Final plat approval by governing body when plat conforms to the conditions of approval, Montana Subdivision and Platting Act, and local subdivision regulations.
- D. Final plat and supplementary documents filed with the County Clerk and Recorder by the subdivider.

The applicant may withdraw application at any time during preliminary or final plat review, and the process is terminated.

A. Introduction

Lewis and Clark County allows only one development right per parcel without the approval of the Board of County Commissioners (BOCC); possible additional development of a parcel is what is being assessed during the subdivision review process.

Major subdivisions are considered to be those divisions of property that include six or more parcels, and that otherwise meet the definitions in Title 76-Chapter 3, MCA.

All subdivisions must be designed by the applicant to avoid or mitigate any significant adverse impacts on:

- agriculture, agricultural water users, or agricultural water;
- local services and provision of local services;
- natural environment;
- wildlife and habitat; and
- public health, safety and general welfare.

B. Subdivision Application Review Process For Major Subdivision

The preliminary plat is a to-scale drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements that furnish a basis of review by the governing body. Appendix B outlines the requirements for a preliminary plat and the subdivision application.

As described below, the process leading to a decision on the subdivision application and preliminary plat includes pre-application meetings with staff; review by planning staff, Planning Board members, and the County Commission; and opportunities for public review and comment.

1. Pre-application Procedures

The applicant (who may be the subdivider or, with the subdivider's written permission, the subdivider's agent) shall contact the County Permit Coordinator to schedule a meeting with County planning and Environmental Health staff. The pre-application meeting shall take place prior to submitting the required subdivision application. The pre-application conference shall take place not more than 30 calendar days from the date that the County Permit Coordinator receives a complete submittal package from the Applicant. This meeting is required and must be held not more than one hundred eighty (180) calendar days prior to submittal of a subdivision application.

The purpose of this meeting is to identify the state laws, local regulations, and the applicable goals and objectives of the Lewis and Clark County Growth Policy that may apply to the subdivision review process, including, but not limited to: zoning regulations, floodplain regulations, and other applicable regulations. The planning staff may notify the applicant of the option of concurrent review of the subdivision by the local government and the Montana Department of Environmental Quality.

The applicant shall provide a to-scale sketch plan of the proposed subdivision for review and discussion. The sketch plan may be a freehand sketch made directly on a print of a topographic map. The sketch plan shall be legibly drawn; show the layout of proposed features in relation to existing site conditions, and the scale dimensions shall be noted on the sketch.

The sketch plan shall include pertinent information such as the following:

- a) approximate tract and lot boundaries of existing tracts of record, with scale dimensions noted;
- b) location of easements, existing rights-of-way, proposed county roads, conservation easements, utilities, parks and open spaces; and
- c) a description of general terrain, natural features (including water bodies, floodplains, geologic hazards and soil types), existing structures and improvements, and proposed public improvements.

The applicant shall provide documentation of:

- a) ownership information, such as a deed, option to buy or buy-sell agreement; including permission to subdivide;
- b) water rights, including location of agricultural water facilities;
- c) any applicable rural or special improvement districts
- d) existing zoning, covenants or development regulations standards,
- e) rights of first refusal for the property; and
- f) the most recent certificate of survey or subdivision plat or deed on file with the Clerk and Recorder's Office.

The Applicant shall receive a list of public utilities, local, state, and federal agencies, and any other entities that have an interest in the proposed subdivision and that may be contacted for comment on the subdivision application. The Applicant shall be notified about the time frames that public utilities, agencies, and other entities are given to respond.

The Applicant shall be notified of any particular additional information that may be required for review of the subdivision application. This does not limit the ability of the planning staff to request additional information at a later time.

2. Subdivision Application Submissions and Distribution

The applicant shall submit for review and approval a subdivision application and preliminary plat of the proposed subdivision that conforms to the requirements of these regulations. The preliminary plat subdivision application shall be prepared in compliance with the requirements listed in Appendix B, and conform to design and improvement of these regulations, including the road and fire standards in Appendix J and K.

If any design features or improvements do not conform with/to these standards, the applicant shall submit a written request for variances with the preliminary plat subdivision application, pursuant to the process in these regulations.

The applicant shall submit a written expressed preference for fulfilling the requirement for parkland dedication or cash donation with the preliminary plat subdivision application, as stipulated in these regulations (see Chapter XI for more details).

The applicant may set forth in the preliminary plat subdivision application a plan for phased development, including filing of the final plat in a phased manner.

The applicant shall submit the following application information to the planning staff as one submittal:

- a. Parts I, II, and III of the Montana Department of Environmental Quality/Local Government Joint Application Form, which includes an environmental assessment, in compliance with the requirements in Section 76-3-603, MCA;
- b. The required review fee;
- c. Five (5) copies of the preliminary plat or site plan and related supplements;
- d. All supplements required by Appendix B;
- e. A property title report prepared by a title company within six months of the date of subdivision plat application submittal;
- f. The preliminary plat or site plan must conform to the design and improvement standards set forth in Chapter XI of these regulations. If any design features or improvements do not conform to these standards, the applicant shall submit a

written request for variances with the subdivision application, pursuant to the procedures in these regulations; and

- g. The application materials must be submitted by the monthly deadline.

The planning staff will review the application materials and determine the completeness and sufficiency of the application. The planning staff has 5 working days to determine whether the application contains all of the listed elements found in Appendix B of these regulations and shall give written notice to the applicant of the planning staff's determination of completeness. If elements are missing from the application, planning staff shall identify those elements in the written notification. The applicant must provide all missing elements before the review process will restart.

Within 15 working days after the applicant has been notified in writing that the application contains all the required elements, planning staff shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow review of the proposed subdivision, and shall give written notification to the applicant of the determination by staff. If planning staff determines that information in the application is not adequate for review of the proposed subdivision, the insufficiencies of the application shall be identified in the written notification to the applicant. The applicant must provide all necessary information required in the sufficiency notification letter before the review process will restart.

A subdivision application shall be submitted on, or prior to, the monthly subdivision application deadline. Planning staff shall review the subdivision application for completeness and sufficiency in accordance with the monthly subdivision application deadline. Applications submitted after the monthly subdivision application deadline will not be reviewed for completeness and sufficiency until the next monthly subdivision application deadline. The sixty (60) working day review period commences on the date Planning staff determines that the subdivision application is complete and sufficient.

The review period may be extended based on the applicant's written concurrence or request.

A determination that an application is complete and/or contains sufficient information for review does not ensure the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agency or the governing body to request additional information.

A determination of sufficiency by the planning staff does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.

After Planning staff has determined the application is complete and sufficient, copies of the subdivision application will be distributed for review to local entities, having a substantial interest in proposed subdivisions, including (but not be limited to) the following:

- Fire, school, and conservation districts;
- Law enforcement, road, and sanitarian/health departments; utilities;
- The United States Forest Service, Bureau of Land Management, and Natural Resources Conservation Service;
- State agencies such as Montana Fish, Wildlife & Parks, the Department of Natural Resources and Conservation, Department of Environmental Quality, and Department of Transportation; and/or
- Other appropriate bodies.

The distribution list may vary, depending on the nature and location of the subdivision proposal.

Review of complete and sufficient applications by planning staff and other organizations shall not delay the governing body's action beyond the 60 working day limit. Any review comments shall be made available to the applicant. Any review comments shall be made available to any member of the public upon request. If, during the review of the application, the planning staff contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, planning staff shall notify the applicant of the contact and the timeframe for response. The planning staff will review the application and any comments received from other organizations and the public. Findings and the rationale behind them shall be incorporated into a staff report with recommendations to the Planning Board.

3. Permission to Enter

By submitting a subdivision application for review, the applicant agrees that the governing body or its designated agent(s) or any affected governmental agency identified during the pre-application meeting may conduct investigations, examinations, and site evaluations deemed necessary to verify information supplied by the applicant as a requirement of these regulations, to post notice, or to adequately evaluate the proposal, and to subsequently monitor compliance with any conditions if the preliminary plat is conditionally approved. The submission of pre-application materials or a preliminary plat subdivision application for

review shall constitute permission for the governing body, its agents, and affected agencies to enter the subject property.

In order to facilitate site investigations, the applicant shall establish visible flagging on the property, located at a minimum on property boundary corners and the entrance intersections of main access roads. This flagging must be established at the time of submittal of the preliminary plat subdivision application.

4. Exemptions from Environmental Assessment

The requirement for preparing an environmental assessment pursuant to Section 76-3-210, MCA and contained in APPENDIX B shall be waived when all of the following requirements have been met:

1. Subdivisions totally within an area that is covered by all of the following are considered to be in the public interest and are exempt from the requirement of an environmental assessment:
 - a) a growth policy adopted pursuant to Title 76, chapter 1, MCA;
 - b) zoning regulations pursuant to Section 76-2-201 or chapter 2, part 3, MCA; and
 - c) a strategy for development, maintenance, and replacement of public infrastructure pursuant to Section 76-1-601, MCA.
2. A Planning Board established pursuant to Title 76, chapter 1, MCA may exempt a proposed subdivision within its jurisdictional area from the requirement for completion of any portion of the environmental assessment if:
 - a) the subdivision is proposed in an area for which a growth policy has been adopted pursuant to Title 76, chapter 1, MCA and the proposed subdivision will be in compliance with the growth policy; or
 - b) the subdivision will contain fewer than 10 parcels and is less than 20 acres.

When an exemption is granted under this subsection (2), the Planning Board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement must accompany the subdivision application when it is submitted for review.

5. Amended Subdivision Applications Prior to the Planning Board Public Hearing

If the applicant makes a change to the subdivision application or preliminary plat after the Planning Department has deemed the application complete and sufficient and prior to the Planning Board public hearing, the applicant shall provide to the Planning Department a written request to amend the application or preliminary plat and to suspend the review period. If the Applicant fails to submit a valid written request, the Planning Department, the Planning Board, or the governing body will not review the changed subdivision application or preliminary plat.

The Planning Department will determine whether the change is a substantial change and notify the applicant in writing of that determination within five (5) working days of receiving the written request.

If the change is deemed substantial and the applicant wishes to go forward with the changes, the Applicant shall complete the following:

- 1) Withdraw the current application;
- 2) Attend a new pre-application conference;
- 3) Submit a new application to the Planning Department; and
- 4) Pay all required fees for the new application.

If the change is deemed to not be substantial, the sixty (60) working day review period commences on the date the Planning Department notifies the Applicant in writing of that determination.

The following changes, although not an exclusive list, may be considered substantial:

- a) reconfiguration or number of lots;
- b) lot uses and or layouts;
- c) road layout;
- d) Traffic Impact Study;
- e) storm water drainage;
- f) water and wastewater treatment proposals;
- g) parkland and open space;
- h) easements; and
- i) access.

The applicant whose subdivision application or preliminary plat has been deemed by planning staff to be substantially changed staff may appeal the decision to the governing body by written notice within five (5) working days of receiving the determination letter from the Planning Department. The applicant must appeal in writing and request a hearing before the

governing body. The applicant shall include evidence to show that the changes to the subdivision application are not substantial with their written request.

If the governing body determines the changes are not substantial, the sixty (60) working day review period commences on the date the governing body makes their decision.

6. Public Hearing

After planning staff accepts a subdivision application as complete, the Planning Board shall hold a public hearing on the application. When a proposed subdivision is proposed to be annexed into a municipality, the Planning Board may hold joint hearings with the governing body of the municipality on the subdivision application and annexation.

Notice of the time and date of the hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 calendar days prior to the date of the hearing. The applicant and each property owner of record immediately adjoining the land included in a plat shall be notified of the hearing by certified or registered mail, not less than 15 calendar days prior to the date of the hearing. The planning staff shall post notice of the hearing at a conspicuous place on the boundary of the proposed subdivision.

When a hearing is held by the Planning Board, the Board shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or denial of the plat.

The Planning Board shall establish rules for conducting public hearings on subdivision applications, which may include limiting the length of the public hearing or the length of individual public and applicant testimony during the hearing. Submission of written comments by agencies and individuals prior to the Planning Board hearing is encouraged. This recommendation must be submitted to the governing body in writing not later than ten (10) working days after the public hearing. A copy of this recommendation shall also be mailed to the applicant.

7. Recommendation for Subdivision Application Approval or Denial

The Planning Board shall:

- a. Consider the following:

- 1) relevant evidence relating to the public health safety, and general welfare, including the subdivision application and preliminary plat, environmental assessment, staff report, discussion of probable impacts, information provided at public hearing(s) and other related documents;
 - 2) any officially adopted growth policy or plan for the area involved;
 - 3) the review criteria as stated in Chapter III. section B.10.; and
 - 4) whether the subdivision application conforms to the provisions of:
 - a) the Montana Subdivision and Platting Act, including but not limited to Section 76-3-608(3), MCA;
 - b) these regulations;
 - c) applicable zoning regulations and/or officially adopted plans for the area involved; and
 - d) other regulations in effect in the area of the proposed subdivision.
- b. Within ten (10) working days after the public hearing, submit in writing, to the governing body the following:
- 1) its findings regarding the items under Section 7a. above;
 - 2) recommended findings of fact which consider the review criteria pursuant to Section 76-3-608, MCA; and
 - 3) a recommendation for approval, conditional approval, or denial of the plat. A copy of this recommendation, findings of facts and conclusions of law shall also be mailed to the applicant. If the Planning Board recommends denial of a subdivision, the recommendation shall include the reasons for denial, the findings of facts and conclusions of law.

- c. The Planning Board or planning staff shall collect public comment regarding the water and sanitation information, and shall forward all comments regarding water and sanitation to the governing body.
- d. No later than two (2) working days before the public meeting at which the governing body is to consider the subdivision application and preliminary plat, the applicant is encouraged to submit in writing to Planning staff the applicant's comments on and responses to the planning board's recommendations. The governing body will consult with the applicant and will give due weight and consideration to the applicant's preference.

8. Amended Subdivision Applications After the Planning Board Hearing

If the applicant makes a change to the subdivision application or preliminary plat after the Planning Board public hearing, the applicant shall provide to the Planning Department a written request to amend the application or preliminary plat and to suspend the review period. If the Applicant fails to submit a valid written request, the Planning Department or the governing body will not review the changed subdivision application or preliminary plat.

The Planning Department will determine whether the change is a substantial change and notify the applicant in writing of that determination within five (5) working days of receiving the written request.

If the change is deemed substantial and the applicant wishes to go forward with the changes, the Applicant shall complete the following:

- 1) Withdraw the current application;
- 2) Attend a new pre-application conference;
- 3) Submit a new application to the Planning Department; and
- 4) Pay all required fees for the new application.

If the change is deemed to not be substantial, the sixty (60) working day review period commences on the date the Planning Department notifies the Applicant in writing of that determination.

The following changes, although not an exclusive list, may be considered substantial:

- a) reconfiguration or number of lots;
- b) lot uses and or layouts;

- c) road layout;
- d) Traffic Impact Study;
- e) storm water drainage;
- f) water and wastewater treatment proposals;
- g) parkland and open space;
- h) easements; and
- i) access.

The applicant whose subdivision application or preliminary plat has been deemed by planning staff to be substantially changed staff may appeal the decision to the governing body by written notice within five (5) working days of receiving the determination letter from the Planning Department. The applicant must appeal in writing and request a hearing before the governing body. The applicant shall include evidence to show that the changes to the subdivision application are not substantial with their written request.

If the governing body determines the changes are not substantial, the sixty (60) working day review period commences on the date the governing body makes their decision.

9. Subsequent Public Hearings on New Evidence Provided After the Planning Board Hearing

The applicant is permitted to submit to planning staff written comments in which the applicant comments on and responds to the recommendations of the Planning Board. Provided that such comments and responses do not constitute new evidence, this written response is permissible and will not require the governing body to determine if a subsequent public hearing is needed.

In the event that the governing body receives written documentation or oral comments from the applicant or other interested parties after the Planning Board has held the public hearing, the governing body shall determine whether public comments or documents presented to the governing body at a public meeting constitute:

- (a) information or analysis of information that was presented at a public hearing that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; OR
- (b) new information regarding a subdivision application that has never been submitted as evidence or considered by either the planning board, the governing body or its agent or agency at a public hearing during which the subdivision

application was considered.

If the governing body determines that the comments or documents from the applicant or other interested parties constitute new evidence or an analysis of information regarding the subdivision application that has never been submitted as evidence or considered by the planning board at the public hearing on the subdivision application, the governing body may:

- (a) approve, conditionally approve, or deny the proposed subdivision application without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible; OR
- (b) schedule or direct its agent or agency to schedule a subsequent public hearing before the Planning Board for consideration of only the new information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

If the governing body decides to have the Planning Board hold a subsequent public hearing, it must be held within 45 calendar days of the governing body's determination to schedule the public hearing. Only new information or analysis of information shall be considered at the subsequent public hearing.

The governing body shall provide notice of the subsequent hearing as follows:

- 1. Notice of the time and date of the subsequent hearing shall be published in the newspaper not less than 15 calendar days prior to the date of the subsequent hearing.
- 2. At least 15 calendar days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified mail to the applicant, and each adjoining property owners.
- 3. The governing body may require the notice be posted at a conspicuous place on the site of the proposed subdivision application.

If the subsequent Planning Board public hearing is held, the review period is suspended as of the date of the governing body's decision to hold a subsequent hearing. The review period resumes at the governing body's next scheduled public meeting for which proper notice for the public

hearing on the subdivision application can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the hearing when making its decision to approve, conditionally approve, or deny the proposed subdivision.

10. Governing Body Action on Subdivision Application

The proposed subdivision will be considered at a regularly scheduled meeting of the governing body. Notice of the time, date and location of the public meeting shall be given not less than 15 calendar days prior to the date of the meeting by publication in a newspaper of general circulation in the county and by certified or registered mail to the applicant and each property owner of record immediately adjoining the land included in the preliminary plat. The planning staff shall post notice of the public meeting on the boundary of the proposed subdivision.

The basis for the governing body's decision to approve, conditionally approve, or deny a subdivision shall be whether the development of the subdivision would meet the requirements of the Montana Subdivision and Platting Act, and these local subdivision regulations, based on the following:

- a. relevant evidence relating to the public health, safety, and general welfare, including the subdivision application, preliminary plat, and supplements;
- b. environmental assessment (Joint Application Form);
- c. Planning Board recommendation;
- d. the statement of probable impacts and mitigation;
- e. an officially adopted growth policy;
- f. comments, evidence and discussions at the public hearing(s), staff report, recommendations, and related information; and
- g. any additional information authorized by law.

The governing body shall issue written findings of fact that weigh the following criteria, as defined in Section 76-3-608(3), MCA:

- a. impacts on agriculture and agricultural water user facilities as defined in the Growth Policy;

- b. impacts on local services as defined in the Growth Policy;
- c. impacts on the natural environment as defined in the Growth Policy;
- d. impacts on wildlife and wildlife habitat as defined in the Growth Policy;
- e. impacts on the public health, safety, and general welfare as defined in the Growth Policy;
- f. compliance with the survey requirements of the MSPA and these regulations;
- g. compliance with these regulations and review procedures;
- h. provision of easements for the location and installation of utilities;
- i. provision of legal and physical access to each parcel within the subdivision, and the notation of that access on the applicable plat; and
- j consistency with applicable zoning or other regulations in effect and/or any officially adopted growth policy for the area involved.

Montana statute allows an exemption from review under the “primary” criteria in Section 76-3-608(3)(a), MCA. This exemption is available for Counties that have adopted a Growth Policy under Title 76, and otherwise meet the criteria listed under Section 76-3-608(7), MCA. As discussed in Chapter IX, certain exemptions are also available through the cluster development provisions described in Section 76-3-509, MCA.

If the governing body approves, conditionally approves or denies the subdivision application, it shall inform the applicant of the decision in writing. The letter shall include a copy of the plat and shall state the reason(s) for denial or enumerating the conditions of approval. The written decision shall include:

- 1) information regarding the appeal process for the denial or imposition of conditions;
- 2) identification of the regulations and statutes relied upon in reaching the decision to deny or impose conditions and

explains how they apply to the decision to deny or impose conditions;

- 3) the facts and conclusions the governing body relied upon in their decision and reference documents, testimony, or other materials that form the basis of the decision;
- 4) the conditions of preliminary plat approval that must be satisfied before the final plat may be approved; and
- 5) the duration of the approval period of the subdivision application (three years).

As detailed in Section 76-3-608, MCA, the governing body may require the applicant to design the subdivision (or provide other measures) to reasonably minimize potentially significant adverse impacts identified during the review. When requiring mitigation, the governing body shall consult with the applicant, and give due weight and consideration to their expressed preferences. Such requirements must be justified by the written findings of the governing body. The written statements to the applicant detailing the circumstances of the subdivision denial or condition imposition must include the reason for the denial or condition imposition, the evidence that justifies the denial or condition imposition, and information regarding the appeal process for the denial or condition imposition.

The governing body shall collect public comments regarding water and sanitation information and shall make any comments submitted, or a summary of the comments submitted, available to the applicant within 30 calendar days after conditional approval or approval of the subdivision application and preliminary plat. The applicant shall as part of the applicant's application for sanitation approval, forward the comments or the summary provided by the governing body to the reviewing authority of the application.

The governing body may withdraw approval of a plat if it determines that information provided by the applicant, and upon which the decision was based, is inaccurate.

11. Subdivision Application Approval Period

Upon approving or conditionally approving a preliminary plat, the governing body shall provide the applicant with a dated and signed statement of approval. This approval shall be in force for not more than 3 calendar years. At the end of this period the governing body may, at the request of the applicant, extend its approval for no more than 1 calendar

year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the applicant, according to Section 76-3-507, MCA. After the subdivision application is approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval providing said approval is obtained within the original or extended approval period as provided in Section 76-3-610(1), MCA. Approval of the major subdivision application does not constitute approval of the major subdivision final plat.

12. Process for Modifying the Conditions of Approval for a Subdivision Application

If proposed modifications to the subdivision application's conditions of approval are substantial, the entire application must be resubmitted and go through the entire subdivision review process again, including payment of fees, staff review, Planning Board hearing and BOCC's meeting. Planning staff shall make a determination whether the proposed modification is substantial and the decision may be reviewed by the Director of Community Development and Planning or his or her designee. If the subdivider disagrees with staff's determination the subdivider can make a written appeal to the BOCC.

Changes to the conditions of approval that will not substantially change the original conditional approval, may be submitted to the governing body for review and approval. The process was developed to assure due process and equal protection, and requires two major actions by the BOCC (a. and b. below):

a. Action Item One

- 1) The subdivider shall send a letter to the BOCC asking that it reconsider a specific condition/s of approval, or in some cases, reconsider the governing body's decision.
- 2) At a public meeting, the BOCC shall make a determination as to whether the subdivider's request merits consideration. In order to warrant consideration, the subdivider must make a reasonable argument in writing describing why the terms of subdivision application approval should be reconsidered, stating the following:
 - What circumstances have changed?

- How will the applicant(s) benefit from the changes?
- What impacts (both positive and negative) will there be on neighbors, the public in general, and the surrounding environment?

b. Action Item Two

- 1) If the BOCC decides to reconsider the specific condition/s of approval, the subdivider must submit the appropriate fee to the Planning Department. Once the application fee is paid, public notice must be given and a public meeting on the matter will be scheduled. In addition, landowners adjacent to the subject subdivision will be notified via the mail of the proposed modification/s and about the public hearing.
- 2) A staff report and recommendations will be completed, based upon the analysis of all the evidence provided by the subdivider and/or available staff.
- 3) The BOCC holds a public meeting on the request. At that meeting, the staff report and recommendations will be presented and the subdivider will have the opportunity to make a presentation. The public will have an opportunity to provide comment on the proposed modification.
- 4) After the public meeting, the BOCC shall make a final decision.
- 5) A letter outlining the BOCC's decision and rationale shall be sent to the subdivider.

13. Construction Timing

The subdivider shall not proceed with any construction work on the proposed subdivision, including grading and excavation relating to public improvements, until he or she obtains from the governing body preliminary approval of the proposed subdivision plat.

Prior to construction of any improvements, the subdivider must submit the required plans to County Planning, and must obtain all necessary permits, which may include but are not limited to: a weed management plan, approach permits, encroachment permits, water rights for public water

systems, and floodplain development permits, as well as any permits required by state and federal agencies.

14. Inspections and Certification

Upon subdivision application approval, the county will prepare a list of work for which inspection and certification is needed. All public improvements must be inspected and certified, as meeting the applicable standard and meeting the approved design plan(s), if applicable by an engineer registered in the State of Montana. The applicant is responsible for the costs of inspections and certifications.

15. Transfers of Title

Except as noted below, a final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. After the subdivision application has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

- a. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent which must be a bank or savings and loan association chartered to do business in the State of Montana; and
- b. That under the terms of the contracts and escrow agreement, the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder; and
- c. That the contracts and escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the subdivision application approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract; and
- d. That the contracts contain the following language: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner;" and

- e. That the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

C. Final Plat Review Process

1. Final Plat Contents

The final plat submitted for approval shall conform in all major respects to the preliminary plat previously reviewed and approved by the governing body, and shall incorporate all modifications required in its review.

The final plat shall comply with the Montana Uniform Standards for Final Subdivision Plats.

2. Final Plat Application

An application for final plat review (available at the County Planning Department), together with three (3) 11" x 17" paper copies of the final plat and supplements, shall be submitted to the Planning Department at least twenty (20) calendar days before a regularly scheduled meeting of the governing body. A final plat must be submitted before the expiration of the subdivision application approval period, or extension thereof. No final plat application shall be accepted, processed nor any action on a final plat be scheduled until a complete application and fee, and copies of the final plat have been received. A final plat application will not be considered complete until all conditions of preliminary approval have been satisfied.

The final plat may constitute only that portion or phase of the approved preliminary plat the subdivider wishes to file, provided that such portion conforms to all requirements of these regulations and is approved by the governing body in writing. Improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments (see Standards for Final Plats, Appendix D).

The final plat must have a certification by the County Treasurer that all taxes and special assessments assessed and levied (currently due or delinquent) are paid on the land proposed for subdivision.

3. Final Plat Review

The final plat will be reviewed by the Planning Department and the survey review committee to ascertain that all conditions and requirements for final

plat approval have been met. Any significant change to the final plat may require the applicant request a modification of conditions of approval from the governing body.

All public improvements must be inspected and certified, as meeting the applicable standard and the approved design plans, by an engineer registered in the State of Montana.

The governing body requires that all final plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the clerk and recorder. The subdivider shall bear the cost of this review. When the survey data shown on the plat meet the requirements set forth by the Montana Subdivision and Platting Act and the Montana Uniform Standards for Monumentation and Final Subdivision Plats, the examining land surveyor shall so certify on the plat. No land surveyor having a financial or personal interest in a plat shall act as an examining land surveyor in regard to that plat.

The subdivider shall make any corrections or revisions to the final plat as noted by the planning staff and/or the examining land surveyor. Then one (1) opaque mylar copy, one (1) reproducible mylar copy, one (1) paper copy, and one (1) digital copy, when available, of the final plat shall be prepared and submitted to the Planning Department.

The governing body will provide for the review of the abstract or certificate of title of the land in question by the County Attorney. The subdivider shall bear the cost of these documents.

4. Guarantee of Public Improvements

As a condition of approval of the final plat, the subdivider shall have installed all required improvements, or shall enter into a subdivision improvements agreement guaranteeing the construction and installation of all such improvements. No construction or placement of structures on the lots shall occur until engineered plans have been approved for improvements related to public health, safety, and general welfare including but not limited to: roads, community water and sewer systems, and fire-fighting facilities, and these improvements have been installed in accordance to the approved plans. Alternative methods of guaranteeing public improvements and the procedures and requirements for securing the guarantees are provided in Appendix E of these regulations.

5. Final Plat Approval Or Denial

The governing body shall approve the final plat when all the requirements and conditions of the subdivision application are met.

The governing body shall examine the final subdivision plat and approve it only when it conforms to the conditions of approval set forth on the preliminary plat. The final plat must also conform to the terms of the Montana Subdivision and Platting Act and these regulations. The governing body may approve a final plat which, in their determination, has been modified to reflect improvements in design, or changes which have occurred in the natural surroundings and environment since the time of subdivision application review and approval.

The governing body shall approve a final plat if it conforms to the approved subdivision application and the subdivider has completed all required modifications or conditions, and met or exceeded all standards and requirements of these regulations. The governing body shall approve the final plat when all of the requirements and conditions of the subdivision application are met. Approval shall be certified by the governing body on the face of the final plat.

If the final plat is denied, the findings of fact and conclusions of law shall be stated in a letter for the records of the governing body, and a copy shall be sent to the applicant. The governing body shall return the opaque mylar copy, the reproducible copy, and digital, when available, to the subdivider within ten (10) working days of the action. The applicant may then make the necessary corrections and resubmit the final plat for approval.

The governing body may withdraw approval of a plat if it determines that information provided by the subdivider, and upon which such decision was based, is inaccurate.

6. Final Plat Filing

The subdivider shall file the opaque mylar copy, the reproducible copy and digital copy, when available, of the approved final plat with the County Clerk and Recorder with the developer paying the filing and recording fees. After approval, the plat shall not be altered in any manner either before or after filing.

The County Clerk and Recorder shall refuse to accept any plat for record that fails to have approval in proper form and shall file approved plats only if they are accompanied by the documents specified in Appendix D, Standards for Final Subdivision Plats.

7. Property Owners' Association

If a common property is to be deeded to a property owners' association, that association shall be incorporated under the applicable laws of the State of Montana and a maintenance district and appropriate Rural Improvement District(s) (RID) shall be established.